

AMENDED IN SENATE JUNE 5, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2129

Introduced by Assembly Member Spitzer
(Coauthor: Assembly Member Cohn)

February 21, 2006

An act to amend Section 527.9 of the Code of Civil Procedure, relating to restraining orders.

LEGISLATIVE COUNSEL'S DIGEST

AB 2129, as amended, Spitzer. Restraining orders: relinquishment of firearms.

Existing law requires a person who is subject to a temporary restraining order or injunction that prohibits certain forms of harassment, violence, harm, intimidation, or abuse to relinquish a firearm. If the person is present in court at a duly noticed hearing, the court must order that person to relinquish the firearm, by either surrendering the firearm to the control of local law enforcement or selling the firearm to a licensed gun dealer, within 24 hours of the order. If the person is not present in court, the respondent is required to relinquish the firearm within 48 hours after being served with the order.

The bill would instead require the person to surrender the firearm within 24 hours of being served with the order without regard to whether the person is present in court.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 527.9 of the Code of Civil Procedure is
2 amended to read:

3 527.9. (a) A person subject to a temporary restraining order
4 or injunction issued pursuant to Section 527.6 or 527.8 of the
5 Code of Civil Procedure, or subject to a restraining order issued
6 pursuant to Section 136.2 of the Penal Code, or Section 15657.03
7 of the Welfare and Institutions Code, shall relinquish the firearm
8 pursuant to this section.

9 (b) Upon *the* issuance of a protective order pursuant to
10 subdivision (a), the court shall order the person to relinquish any
11 firearm in that person's immediate possession or control, or
12 subject to that person's immediate possession or control, within
13 24 hours of being served with the order, either by surrendering
14 the firearm to the control of local law enforcement officials, or
15 by selling the firearm to a licensed gun dealer, as specified in
16 Section 12071 of the Penal Code. A person ordered to relinquish
17 any firearm pursuant to this subdivision shall file with the court a
18 receipt showing the firearm was surrendered to the local law
19 enforcement agency or sold to a licensed gun dealer within 72
20 hours after receiving the order. In the event that it is necessary to
21 continue the date of any hearing due to a request for a
22 relinquishment order pursuant to this section, the court shall
23 ensure that all applicable protective orders described in Section
24 6218 of the Family Code remain in effect or bifurcate the issues
25 and grant the permanent restraining order pending the date of the
26 hearing.

27 (c) A local law enforcement agency may charge the person
28 subject to the order or injunction a fee for the storage of any
29 firearm relinquished pursuant to this section. The fee shall not
30 exceed the actual cost incurred by the local law enforcement
31 agency for the storage of the firearm. For purposes of this
32 subdivision, "actual cost" means expenses directly related to
33 taking possession of a firearm, storing the firearm, and
34 surrendering possession of the firearm to a licensed dealer as
35 defined in Section 12071 of the Penal Code or to the person
36 relinquishing the firearm.

37 (d) The restraining order requiring a person to relinquish a
38 firearm pursuant to subdivision (b) shall state on its face that the

1 respondent is prohibited from owning, possessing, purchasing, or
2 receiving a firearm while the protective order is in effect and that
3 the firearm shall be relinquished to the local law enforcement
4 agency for that jurisdiction or sold to a licensed gun dealer, and
5 that proof of surrender or sale shall be filed with the court within
6 a specified period of receipt of the order. The order shall also
7 state on its face the expiration date for relinquishment. Nothing
8 in this section shall limit a respondent's right under existing law
9 to petition the court at a later date for modification of the order.

10 (e) The restraining order requiring a person to relinquish a
11 firearm pursuant to subdivision (b) shall prohibit the person from
12 possessing or controlling any firearm for the duration of the
13 order. At the expiration of the order, the local law enforcement
14 agency shall return possession of any surrendered firearm to the
15 respondent, within five days after the expiration of the
16 relinquishment order, unless the local law enforcement agency
17 determines that (1) the firearm has been stolen, (2) the
18 respondent is prohibited from possessing a firearm because the
19 respondent is in any prohibited class for the possession of
20 firearms, as defined in Sections 12021 and 12021.1 of the Penal
21 Code and Sections 8100 and 8103 of the Welfare and Institutions
22 Code, or (3) another successive restraining order is used against
23 the respondent under this section. If the local law enforcement
24 agency determines that the respondent is the legal owner of any
25 firearm deposited with the local law enforcement agency and is
26 prohibited from possessing any firearm, the respondent shall be
27 entitled to sell or transfer the firearm to a licensed dealer as
28 defined in Section 12071 of the Penal Code. If the firearm has
29 been stolen, the firearm shall be restored to the lawful owner
30 upon his or her identification of the firearm and proof of
31 ownership.

32 (f) The court may, as part of the relinquishment order, grant an
33 exemption from the relinquishment requirements of this section
34 for a particular firearm if the respondent can show that a
35 particular firearm is necessary as a condition of continued
36 employment and that the current employer is unable to reassign
37 the respondent to another position where a firearm is
38 unnecessary. If an exemption is granted pursuant to this
39 subdivision, the order shall provide that the firearm shall be in
40 the physical possession of the respondent only during scheduled

1 work hours and during travel to and from his or her place of
2 employment. In any case involving a peace officer who as a
3 condition of employment and whose personal safety depends on
4 the ability to carry a firearm, a court may allow the peace officer
5 to continue to carry a firearm, either on duty or off duty, if the
6 court finds by a preponderance of the evidence that the officer
7 does not pose a threat of harm. Prior to making this finding, the
8 court shall require a mandatory psychological evaluation of the
9 peace officer and may require the peace officer to enter into
10 counseling or other remedial treatment program to deal with any
11 propensity for domestic violence.

12 (g) During the period of the relinquishment order, a
13 respondent is entitled to make one sale of all firearms that are in
14 the possession of a local law enforcement agency pursuant to this
15 section. A licensed gun dealer, who presents a local law
16 enforcement agency with a bill of sale indicating that all firearms
17 owned by the respondent that are in the possession of the local
18 law enforcement agency have been sold by the respondent to the
19 licensed gun dealer, shall be given possession of those firearms,
20 at the location where a respondent's firearms are stored, within
21 five days of presenting the local law enforcement agency with a
22 bill of sale.